

ORIGINAL

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

ASHLEY ADAMS
716 N Barrett Lane
Christiana, DE 19702
Mailing address:
PO Box 7652
Newark, DE 19714

PLAINTIFF

vs

JO ELLEN CHAPEN SHELDON
708 Pebble Beach Drive
Elkton, MD 21921

DEFENDANT

DISTRICT COURT

No. 04-251 JJF

MOTION FOR
PROTECTION ORDER

MOTION FOR PROTECTIVE ORDER

FILED
U.S. DISTRICT COURT
DISTRICT OF DELAWARE
2007 NOV 21 AM 11:24

COMES NOW, Plaintiff, Ashley Adams, hereby moves this Honorable Court pursuant to Federal Rule 26 (c) to protect the Plaintiff from undue burden and expenses or that the scope of the disclosure or discovery be limited to certain matters; for entry of an order protecting Plaintiff from Defendant's IME (Independent Medical Evaluation); Federal Rule 26 (c) (2) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery.

In support of this motion, the Plaintiff states the following:

Rule 26 (c) provides that upon "motion by a party or by the party from who discovery is sought.....the court...may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense." Fed. R. Civ. P. 26 (c).

To prevail the movant must demonstrate good cause for a protective order. Id. "Good cause is established on a showing that disclosure will work a clearly defined and serious injury to the party seeking closure". Pansy v. Borough of Stroudsburg, 23 F.3d 772, 786 (3d Cir. 1994) (quoting Publicker Indus. Inc. V. Cohen, 733 F.2d 1059, 1071 (3d Cir. 1984)). In determining whether there is good cause, courts will balance the interests of the parties and the public. Pansy, 23 F.3d at 787.

(1)

This suit arises out of an automobile accident that occurred April 23, 2002, whereby Jo Ellen Chapen Sheldon negligence operation of a motor vehicle causing severe bodily injury to Ashley Adams.

(2)

Now, more than five (5) years later, Defense Counsel has scheduled for the first time, an IME for the Plaintiff.

(3)

The request for the IME was initiated approximately three (3) weeks ago. To that point, Plaintiff understood that Defense Counsel would be using Dr. Rudin as their IME. Dr. Rudin is a physican that Plaintiff had a consultation within 2-3 months of the motor vehicle accident. Plaintiff received notice from Defense Counsel with a scheduled date for an appointment for an IME with Dr. Richard I. Katz, 5401 Old York Road, Klien Building, Suite 405, Philadelphia, PA 19141. Plaintiff had a conflict on that date and could not attend, and contacted Defense Counsel. Plaintiff requested at that time to schedule the IME with a doctor in Delaware, due to the undue burden of expenses and time involved to go to an appointment in Philadelphia; although the address is Philadelphia, PA, this location is approximately 40minutes further than Center City Philadelphia, PA.

(4)

Defense Counsel refused to schedule an IME in Delaware, but did re-schedule another appointment with Dr. Katz.

(5)

Plaintiff received that re-scheduled notice and contacted Dr. Katz's office to reschedule as it was over-cumbersome for the Defense Counsel to schedule appointments not knowing Plaintiff's scheduled commitments. Dr. Katz's office refused to re-schedule, stating all rescheduling would have to occur from the Defense Counsel.

(6)

After numerous requests for an IME in Delaware, Defense Attorney refused, stating that State Farm wants to use this doctor; Defense Counsel collaborated on dates with Plaintiff and set the date for November 13, 2007.

(7)

The Mediation was then scheduled to occur on November 13, 2007, and Defense Counsel without contacting Plaintiff about conflicts of dates, did hand-deliver another notice for November 15, 2007, at the Mediation. Plaintiff did not have an opportunity to discuss this matter at that time, but did notify Defense Counsel the next day to inform of Plaintiff's conflict on November 15, 2007, and Plaintiff could not attend.

(8)

Plaintiff receives another notice of a scheduled IME for November 26, 2007, again without contacting Plaintiff to determine conflict of Plaintiff's schedule.

(9)

Plaintiff contacts Defense Counsel and informs that this date is a conflict, again requesting a Delaware IME due to the prior conflicts, which is becoming frustrating to both the Plaintiff, Defense Counsel and Dr. Katz's office.

(10)

Defense Counsel informs Plaintiff that if she did not attend the November 26, 2007 IME, that Plaintiff would be assessed \$1,000.00 cancellation fee.

(11)

Plaintiff files this Motion on that basis, to request this Honorable Court to mandate Defense Counsel to obtain an IME in Delaware for Plaintiff to attend.

(12)

Dr. Katz's office is located more than 200miles from Plaintiff's home address, an overburdensome commute in Philadelphia, parking and tolls.

(13)

Plaintiff requested reimbursement for her expenses and Defense Counsel offered to pay only a parking fee.

(14)

Federal rule of Civil Procedure 26 (c) provides for a protective order for good cause shown, to not overburden the Plaintiff, by scheduling an IME more than five (5) years after the motor vehicle accident, requiring the Plaintiff to travel more than 200miles to attend this IME.

(15)

An IME at this stage will present very little evidence given the length of time since the motor vehicle accident.

(16)

Further research has determined that Dr. Katz, is affiliate with University of Penn and that Dr. Katz's specialty is evaluating accident victims for Insurance companies, and for that service of performing IME's for Insurance Companies, Dr. Katz charges a premium fee.

(17)

Plaintiff did not have a choice in choosing her doctor's when she was admitted to the hospital; likewise, Insurance Companies should be not allowed to gain an advantage over the Plaintiff by presenting a doctor with the obvious credentials that most likely would supersede Plaintiff's

doctor's credentials, for presentation to an unfair advantage over Plaintiff.

(13)

The purpose of the IME is to provide an independent medical evaluation of the Plaintiff, and Plaintiff does not dispute this, however, Plaintiff should not be required to travel more than 200 miles, a commute for over 2 hours for an IME, for the benefit of State Farm Insurance to have a doctor that has credentials far exceeding most doctors, for only the benefit of State Farm Insurance. That the IME should be located geographically as not to place Plaintiff in undue hardship, which would only benefit State Farm Insurance.

(14)

Plaintiff understood that Dr. Rudin, a Delaware physician was being called by Defense Counsel on their behalf. Dr. Rudin was a consult physician that saw Plaintiff within 2-3 months of the motor vehicle accident.

(15)

Dr. Rudin performs IME's and testifies on behalf of Insurance Companies.

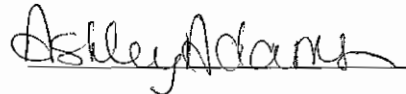
(16)

Plaintiff will not call Dr. Rudin on her behalf, even though his report was finding of a 'closed head injury'.

(22)

Plaintiff has conferred with Defense Counsel to try to resolve these issues without success.

WHEREFORE, Plaintiff, Ashley Adams, asks this Honorable Court to grant her Motion for a Protective Order and Order for Defense Counsel to schedule the IME with a doctor located geographically reasonable, located in Delaware.

A handwritten signature in cursive script that reads "Ashley Adams". The signature is written in black ink and is positioned above the printed name and address.

Ashley Adams, *Pro Se*, Plaintiff
PO Box 7652
Newark, DE 19714

Dated: November 21, 2007

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JO ELLEN CHAPEN SHELDON
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DISTRICT COURT

No. 04-251 JJF

ORDER

ORDER

IT IS HEREBY ORDERED this ____ day of _____ 2007, for the reasons stated in Plaintiffs' Motion for a Protective Order it is **GRANTED** and the Defendant is **ORDERED** to schedule Plaintiff with an IME conveniently located in Delaware.

United States District Judge

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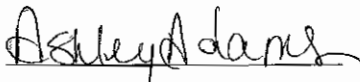
No. 04-251 JJF

HEARING REQUEST

REQUEST FOR A HEARING

Plaintiff, Ashley Adams hereby requests a Hearing on its


MOTION FOR PROTECTION ORDER

By: 

Ashley Adams
PO Box 7652
Newark, DE 19714
Plaintiff, pro se

FILING DATE: November 21, 2007

9. Take exit **#13/VALLEY FORGE (I-76W)** onto **PENROSE AVE(PA-291 E)** toward **VALLEY FORGE (I-76 WEST)/ISLAND AVE (PA-291)/VALLEY FORGE (I-76 W)** - go **1.8** mi
10. Continue to follow **PA-291 E** - go **3.0** mi
11. Continue on **I-76 W** - go **6.9** mi
12. Bear **R** on **US-1 N** - go **2.6** mi
13. Take the **BROAD STREET (PA-611)** exit - go **< 0.1** mi
14. Continue on **ST LUKE ST** - go **0.3** mi
15. Turn **L** on **N BROAD ST(PA-611)** - go **1.1** mi
16. Turn **R** on **W SOMERVILLE AVE** - go **< 0.1** mi
17. Turn **L** on **OLD YORK RD** - go **< 0.1** mi
18. Arrive at **5401 OLD YORK RD, PHILADELPHIA**, on the **R**

B 5401 Old York Rd, Philadelphia, PA 19141, United States 

Distance: 50.7 miles Time: 1 hour 1 min (approx.)

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When using any driving directions or map, it's a good idea to do a reality check and make sure the road still exists, watch out for construction, and follow all traffic safety precautions. This is only to be used as an aid in planning.

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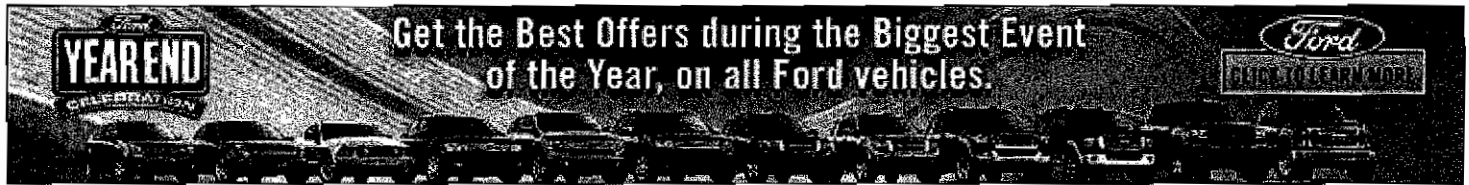
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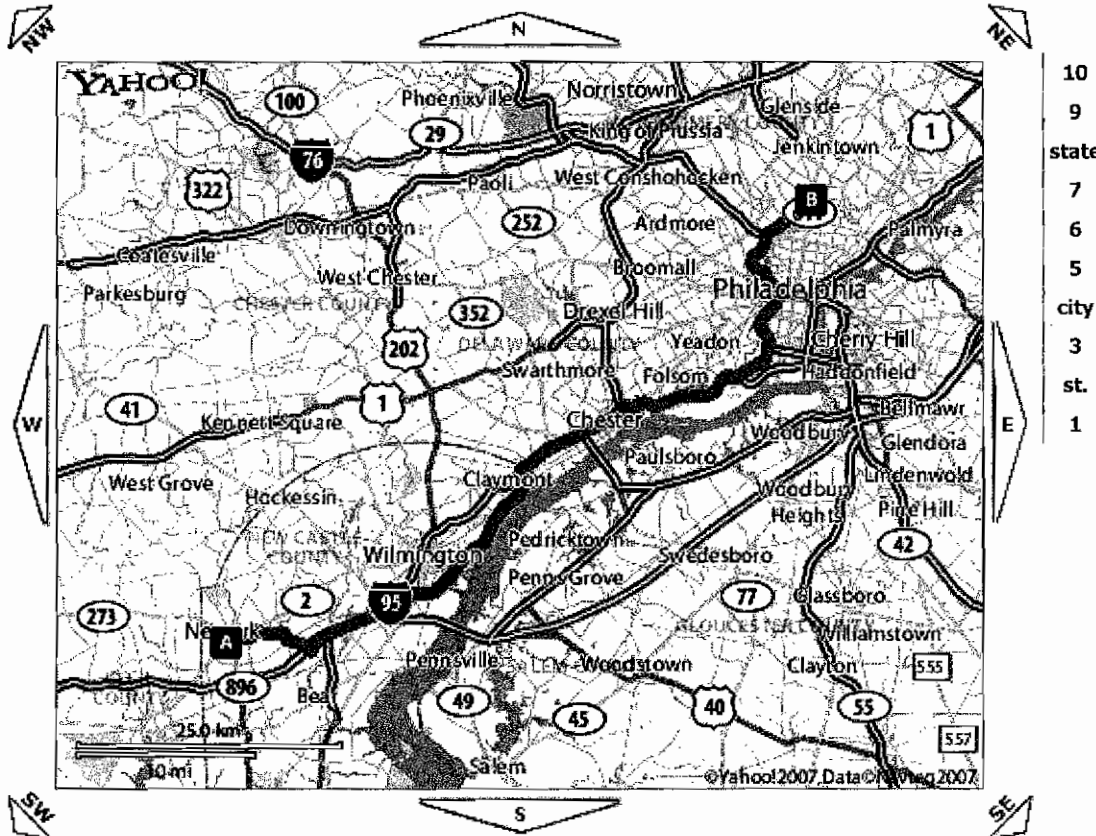
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A Newark, DE 19711, United States

1. Starting at the center of zip code **19711** on **ELKTON RD** go toward **OLD BARKSDALE RD** - go **0.4** mi
2. Turn **R** on **W DELAWARE AVE(SR-2-BR E)** - go **1.2** mi
3. Turn **L** on **LIBRARY AVE(SR-2)** - go **0.2** mi
4. Turn **R** on **NEWARK CHRISTIANA RD(SR-273)** - go **2.2** mi
5. Bear **L** to follow **SR-273** - go **1.2** mi
6. Take ramp onto **I-95 N** toward **I-95/DELAWARE MEMORIAL BRIDGE/WILMINGTON** - go **6.0** mi
7. Continue on **I-495 N** - go **11.4** mi
8. Continue on **I-95 N** - go **12.4** mi



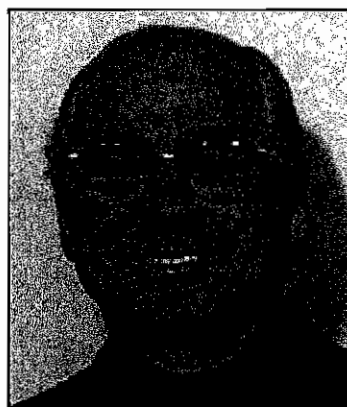
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Richard I. Katz, MD
Physician

Richard I. Katz, MD

Physician

Specialty:

Neurology

Practice Location(s):

Katz, Bennett, & Levin Neurology Associates, PC

405 Klein Building

5401 Old York Road

Philadelphia, PA 19141

1-800-789-PENN (7366)

[Driving Directions](#)

Certification:

Neurology, 1974

Affiliation:

[Penn NeuroCare](#)

Faculty Appointment:

Clinical Professor of Neurology

Educational Background:

Medical School: Duke University Medical School

Internship: Duke University Medical Center

Residency: Duke University Medical Center

Memberships:

American Academy of Neurology; American Medical Association;

Philadelphia County Medical Society; Philadelphia Neurological Society;

Epilepsy Foundation of Southeastern Pennsylvania

Areas of Interest

general neurology

headache -

undiagnosed

leg/back pain -

undiagnosed

motor vehicle

accidents

neck pain -

undiagnosed

shoulder/arm pain -

undiagnosed

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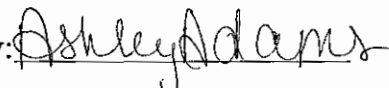
SERVICE NOTICE

NOTICE OF SERVICE

I hereby give notice that I caused two (2) true and correct copies of the foregoing to be served upon the following on the date set forth below, via first class mail, postage prepaid, and/or hand-delivered:

MOTION FOR PROTECTION ORDER

Beth H Christman
CASARINO, CHRISTMAN, & SHALK, P.A.
800 N King Street, Suite 200
P.O. Box 1276
Wilmington, DE 19899
Attorney for Defendant

By: 

Ashley Adams
PO Box 7652
Newark, DE 19714

Dated: November 21, 2007